WP(C) 6415/2007

BEFORE

HON'BLE MR JUSTICE AMITAVA ROY

The order dated 4.7.2007 passed by the Additional Deputy Commissioner(F & CS), Tinsukia suspending the petitioner's licence No.TSM78/92-Pt/98 in the exercise of powers under Clause 15(1) of the Assam Public Distribution of Articles Order,1982 (hereinafter referred to as the 'Order') is under challenge.

I have heard Mr GN Sahewalla, learned Senior counsel for the petitioner. Also heard Mr P. Roy, learned State counsel for the official respondents.

The facts indispensable for disposing of this petition are that ,the petitioner on the strength of the aforesaid licence had been running a fair price shop at Raja Ali Road, Tinsukia. On 12.6.2007 some officials of the Food & Civil Supplies Department visited his shop premises and seized several documents pertaining to the sale . Subsequent thereto, a team of BIEO officials visited the shop establishment and made further enquiries. An FIR was thereafter lodged with the local police alleging that the petitioner had sold P.D.S./T.P.D.S. commodities in the open market.

By the impugned order ,the petitioner's licence was suspended and he was asked to show cause as to why the same would not be cancelled for the violation of the Order. Though, the petitioner in response to the notice submitted an explanation denying the charge levelled against him, the proceeding has not yet been finalized.

Mr Sahewalla, referring to Clause 15(2) of the Order, has urged that as the order of suspension is over 90 days, the same with the afflux of time has become non est in law. According to him, in terms of the above provision of the Order, no order of suspension of a licence passed without affording any opportunity of hearing to the licencee can extend beyond 90 days if in the meantime, the same(licence) has not been cancelled. As in the instant case, the proceeding initiated for the purpose of canceling the petitioner's licence is pending beyond the above time limit, having regard to the date of the impugned order, the same as on date, is non existent in the eye of law.

Though, Mr Roy was granted time to obtain instructions , in particular, as to whether any order extending the order of suspension in the meantime, has been passed, the learned State counsel has apprised this Court that he is without any instructions. Further, on a reading of the above provision of the Order, he has not been able to project a different interpretations of the above provision of the Order.

Upon hearing the learned counsel for the parties and on a reading of Clause15(2) of the Order, this Court is of the view that the contention raised on behalf of the petitioner is well founded. As the materials do not disclose that as on date the impugned order of suspension has been extended by the author thereof, the same on the expiry of 90 days of its passing is rendered ineffectual and inoperative in law.

In the above view of the matter, the order dated 4.7.2007 stands quashed. The petition is allowed in the above terms. No costs.